

Section Four

How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301 of HAVA.

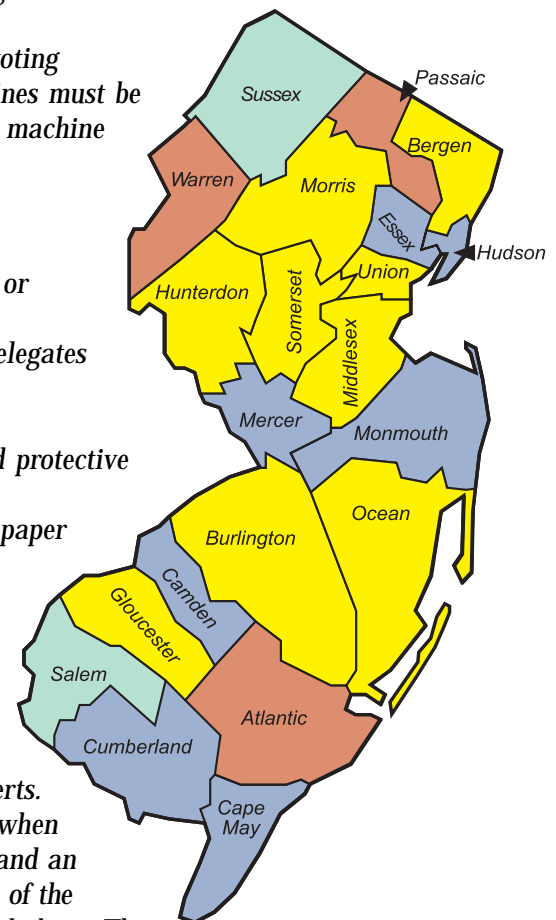
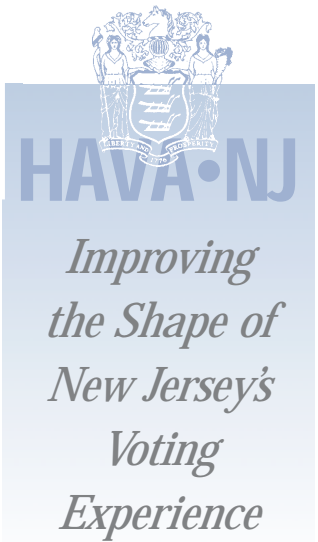
Voting Systems

As set forth in Section One of the Plan, HAVA establishes specific standards for all voting systems in the United States, which must be in effect no later than January 1, 2006. It is fair to say that these standards are intended to ensure that the ballots cast accurately reflect each voter's true, intended choice and that those votes are cast in a private and secure manner. These standards particularly safeguard the rights of voters with disabilities, and facilitate the full participation in the electoral process of certain groups of voters with limited, or no, English language proficiency.

New Jersey has had long-standing statutory requirements for voting machines, some of which mirror the HAVA requirements. Voting machines must be certified before being used in any election in New Jersey, and no voting machine may be certified unless it meets the following standards

- 1) assuring voter privacy;
- 2) preventing overvoting;
- 3) permitting the voter to cast votes for all offices for which he or she is entitled to vote;
- 4) allowing for write-in voting, except for the party offices of delegates to national conventions;
- 5) protecting accurate vote counts;
- 6) having integrity mechanisms, such as locking capability and protective and public counters; and
- 7) affixing an emergency ballot box to each machine for use of paper ballots in cases of machine malfunctions.

These standards have applied equally to mechanical and electronic (including optical scanning systems) voting machines. As stated in Section One of the Plan, a voting machine must first be certified by the Attorney General before it may be used in an election. Title 19 requires the convening of a three-member Committee to be composed of a patent attorney and two mechanical voting machine experts. In practice, the Committee, now convened by the Division of Elections when requested, does consist of a patent attorney, one voting machine expert and an information technology expert. This Committee requires a demonstration of the machine to determine if it meets the current statutory requirements, as noted above. The Committee further requires that the machine has been approved and certified by a recognized Independent Testing Authority (ITA), which will test voting equipment for compliance with the voluntary standards developed by the Federal Election Commission. Copies of such certifications must be provided to the Committee.



- Lever
- Electronic (non adaptable)
- Electronic (currently adapted for individuals with disabilities)
- Electronic (adaptable for individuals with disabilities)

Once a voting machine is certified and purchased by a county for use, the law further requires that it be subject to public inspection and testing before an election day. Pursuant to Title 19, it is the legal responsibility of the County Commissioner of Registration to have all voting machines prepared in working order for an election and thereafter to make them subject to inspection. Notice of the place and time of the inspection is required to be given to the political party county committee chairs and, typically, the candidates on the ballot.

In order to come into compliance with HAVA, which envisions the abolition of the lever voting machines, it will be necessary for the Attorney General to promulgate rules and regulations that comport with the latest technology of voting machines. The current voting machine examination committee must formally be redefined to include individuals with the expertise to properly analyze electronic machinery and to address other issues that may arise, such as security of software and access for voters with disabilities. The request for ITA certification must also be formalized.

Further, explicit power should be granted to the Attorney General, on the basis of the voting machine committee recommendation, to de-certify any voting system that is shown to not meet HAVA requirements. In short, current law has been outpaced by the growing technological advances and must be revised. Any such revision to statutes or regulations should be flexible enough to consider the capability of a voting system to adapt to changes in voting procedures, such as proportional or cumulative voting, which are concepts being considered in other jurisdictions.

Definition of “Vote”

HAVA further requires each state to define what constitutes a vote; what will count and what will not count. There are longstanding provisions in Chapter 16 of Title 19 that define the validity and non-validity of a paper ballot vote. Again, new definitions are required to comport with the emerging voting technology. This will require legislation.

Polling Place Accessibility in Relation to Voting Systems

As stated above, HAVA requires that there be at least one accessible voting system in each polling place for voters with disabilities. The voting system must be able to accommodate voters with a range of disabilities, such as the mobility-impaired voter, including those who use wheelchairs, to the voter with visual impairment who may require audio assistance to vote independently. Access to such systems for voters with disabilities is unattainable, however, if the voter is denied physical access to the polling place in the first place. Therefore, the issue of accessible voting systems is intrinsically tied to the issue of accessible polling places.

In New Jersey, the County Boards of Election, which certify polling places, are mandated to locate voting facilities that are physically accessible. The New Jersey Division of Elections distributes the reporting forms and checklists that are to be used to determine if a polling place is accessible.

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The polling place accessibility standards are based upon the State's Uniform Construction Code, Barrier Free Subcode, N.J.A.C. 5:23-7. In order to make an informed assessment, there must be a physical inspection of the site. The review must be from the parking lot to the entrance into the building and straight into the voting machine. Under current law, if it is determined that there is no accessible polling site for an election district, the County Board may apply to the Attorney General for a waiver. Because 100% accessible polling places are the commitment and goal of the Attorney General and the State, waivers are disfavored; any such request is now carefully scrutinized and requires photographic documentation and a review of alternate locations investigated in order to allow the Division of Elections to better assess the request.

Achieving this goal will require a multi-faceted approach. First, there must be adequate training for those individuals charged by the County Boards of Election with the duty to inspect polling sites and those county representatives charged with the duty to review the findings, as to the variables of accessibility. For example, this requires an understanding of the various types of motorized equipment and their individual access requirements. This training must be standardized and uniform throughout the State, and will necessarily require the input of disability advocacy groups and those with specialized knowledge in this field. It has been suggested that the Advisory Groups should be reconstituted in the various Counties. Creative ways of accessibility that are not cost-prohibitive, such as portable ramps, also must be explored.

Fundamental to this mission, however, is enforcement. The State must provide the oversight and monitoring of this statutory duty, by dedicating necessary resources. This must be a component of the State's management of HAVA compliance. It should also be considered as to whether criminal penalties should be imposed, by way of legislative enactment, for willful failure to ascertain accessible polling places. It has been further suggested that the statutory distance restriction of going beyond the boundaries of an election district be relaxed to allow for more location options that may be fully accessible for voters with disabilities.

It was suggested that consideration be given to closing public schools on the day of a general election, in order for the schools to be more fully available for election use. It was articulated that this proposal would also alleviate school safety concerns. Conversely, it may be argued that closing the schools on general election day could reduce voter turnout, as parents may be unable to arrange child care on election day to facilitate their ability to go to the polls.

In consideration of the importance of providing polling place access to voters with disabilities, the above recommendations and proposals should receive all due attention.